

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>SECURITIES INVESTOR PROTECTION CORPORATION, v. BERNARD L. MADOFF INVESTMENT SECURITIES LLC, Defendant.</p> <p>In re: BERNARD L. MADOFF, Debtor.</p>	<p>Adv. Pro. No. 08-01789 (CGM) SIPA Liquidation (Substantively Consolidated)</p>
<p>IRVING H. PICARD, Trustee for the Substantively Consolidated SIPA Liquidation of Bernard L. Madoff Investment Securities LLC and the Estate of Bernard L. Madoff, Plaintiff, v. CREDIT SUISSE AG, as successor-in-interest to Clariden Leu AG and Bank Leu AG; Defendant.</p>	<p>Adv. Pro. No. 12-01676 (CGM)</p>

STIPULATION AND ORDER

WHEREAS, on May 30, 2012, Irving H. Picard (the “Trustee”), as Trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. §§ 78aaa-*III*, and the substantively consolidated chapter 7 estate of Bernard L. Madoff commenced the above-captioned adversary proceeding by filing a complaint (the “Complaint”) against defendants Credit Suisse AG as successor-in-interest to Clariden Leu AG and Bank Leu AG (“Defendant”) and Clariden Leu AG (f/k/a Clariden Bank AG) individually and as successor in interest to Bank Leu AG (“Clariden

Leu”), to recover subsequent transfers allegedly received from Fairfield Sentry Limited (“Fairfield Sentry”), Fairfield Sigma Limited (“Fairfield Sigma”), Fairfield Lambda Limited (together with Fairfield Sentry and Fairfield Sigma, the “Fairfield Funds”), and Kingate Global Fund Ltd. (“Kingate Global”), ECF No. 1;

WHEREAS, pursuant to a stipulation between the Trustee and Defendant (together, the “Parties”) so-ordered by the Bankruptcy Court on July 27, 2012, the Trustee agreed to amend the Complaint and remove Clariden Leu as a separate defendant based on Defendant’s representations that: (i) Defendant is the successor-in-interest to Clariden Leu by virtue of their *de jure* merger on April 2, 2012, (ii) Defendant had acquired liabilities of Clariden Leu through the merger including those alleged in the Complaint, and (iii) Clariden Leu had ceased to exist by virtue of the merger, ECF No. 11;

WHEREAS, in accordance with that stipulation, on July 30, 2012, the Trustee filed his first amended complaint (“Amended Complaint”) in this proceeding against Defendant to recover subsequent transfers allegedly received from the Fairfield Funds and Kingate Global, ECF No. 12; and

WHEREAS, on August 6, 2019, the Court entered an Order Pursuant to Section 105(a) of the Bankruptcy Code and Rules 2002 and 9019 of the Federal Rules of Bankruptcy Procedure approving a settlement agreement (“Settlement Agreement”) by and among the Trustee, Kingate Global and Kingate Euro Fund Ltd. (together with Kingate Global, the “Kingate Funds”).

Picard v. Ceretti, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. Aug. 6, 2019), ECF No. 417. The Settlement Agreement was a full and final settlement and satisfaction of the Trustee’s claims against the Kingate Funds. *Picard v. Ceretti*, Adv. Pro. No. 09-01161 (CGM) (Bankr. S.D.N.Y. July 17, 2019), ECF No. 413-2. The release granted by the Trustee in the Settlement

Agreement extended to the Kingate Funds' shareholders to the extent that any such shareholders, like Defendant's predecessors in interest Clariden Leu AG and Bank Leu AG, received transfers of money from the Kingate Funds, but the Settlement Agreement did not include a release of claims that the Trustee may bring that are unrelated to the Kingate Funds' investments in or withdrawals from BLMIS. *Id.*

IT IS HEREBY STIPULATED AND AGREED by and between the Parties by the endorsement of their counsel below, that:

1. Pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, as incorporated by Rule 7015 of the Federal Rules of Bankruptcy Procedure, the Trustee amends the Amended Complaint to dismiss Count Four, which sought to recover transfers allegedly received from Kingate Global. Count Four is hereby dismissed with prejudice, and no further action is needed by either Party to effectuate this amendment.

2. Defendant shall respond to the Amended Complaint, as amended further by Paragraph 1 above, by June 29, 2022. If Defendant files a motion to dismiss the Amended Complaint, such motion shall set forth any and all grounds for dismissal at the pleading stage. The Trustee shall respond to the motion by August 29, 2022, and Defendant shall file its reply by September 29, 2022.

3. If Defendant files such a motion to dismiss the Amended Complaint, the Parties shall seek oral argument on the motion at the Court's first available convenience. The deadlines established by this Stipulation and Order are without prejudice to either Party seeking future extensions of time.

4. The Parties reserve all rights, arguments, objections and defenses they may have, and entry into this Stipulation shall not impair or otherwise affect any such rights, arguments,

objections, and defenses, including without limitation, challenges to personal jurisdiction or to the jurisdiction of this Court.

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Dated: New York, New York
April 13, 2022

**WINDELS MARX LANE &
MITTENDORF, LLP**

By: /s/ Kim M. Longo
Robert J. Luddy
Kim M. Longo
Alex Jonatowski
156 West 56th Street
New York, New York 10019
Telephone: (212) 237-1000
rluddy@windelsmarx.com
klongo@windelsmarx.com
ajonatowski@windelsmarx.com

*Special Counsel to Irving H. Picard, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC and
for the Chapter 7 Estate of Bernard L. Madoff*

O'MELVENY & MYERS LLP

By: /s/ Daniel S. Shamah
William J. Sushon
Daniel S. Shamah
Kayla Haran
7 Times Square
New York, New York 10036
Telephone: (212) 326-2000
wsushon@omm.com
dshamah@omm.com
kharan@omm.com

Attorneys for Defendant

SO ORDERED:

**Dated: April 14, 2022
Poughkeepsie, New York**

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/s/ Cecelia G. Morris

**Hon. Cecelia G. Morris
U.S. Bankruptcy Judge**